

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:17-CR-526 RLW
)	
KURT WALLACE,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case is before the Court on pretrial matters. Defendant Kurt Wallace was charged by federal complaint on November 9, 2017, and by federal indictment on November 15, 2017. Superseding indictments were returned on December 14, 2017, and September 19, 2019. This case has repeatedly been deemed complex (ECF Nos. 45, 64, 224, 234, 267, 309, 323). The United States advised Defendant and the Court on November 23, 2021, that it would not seek the death penalty against Defendant. The United States dismissed certain counts without prejudice on June 13, 2022, and Defendant is currently charged with nine crimes.

Background

Pretrial matters were referred to United States Magistrate Judge David D. Noce pursuant to 28 U.S.C. § 636(b). Defendant filed pretrial motions on January 21, 2022, in accordance with scheduling orders entered in the case. Defendant filed the following motions: Motion to Suppress Cellular Location Data (ECF No. 305), Motion to Suppress Photo Lineup Identifications (ECF No. 306), and Motion to Suppress Statements (Doc. 307). Defendant previously made an oral

motion to suppress statements (ECF No. 207).¹ The Government made an oral motion for a determination of the admissibility of any arguably suppressible evidence (ECF No. 208).

Judge Noce held an evidentiary hearing on Defendant's motions on December 15, 2022, at which the Government presented the testimony of two witnesses, St. Louis Metropolitan Police Department ("SLMPD") Detective Katherine Rund, and SLMPD Detective Colin Tully. The defense did not call any witnesses. A transcript of the hearing was prepared (ECF No. 355).

Judge Noce filed an Order and Recommendation of United States Magistrate Judge (ECF No. 360) on April 6, 2023, which recommends that Defendant's Motion to Suppress Cellular Location Data, Motion to Suppress Photo Lineup Identifications, and Motion to Suppress Statements be denied, as well as the oral motion to suppress. Judge Noce denied as moot the Government's oral motion for a determination of the admissibility of any arguably suppressible evidence.

Defendant filed timely Objections to the Magistrate Judge's Order and Recommendation (ECF No. 363) on April 21, 2023. Defendant's objections state: "Defendant objects to the factual findings and conclusions of law contained in the Report and Recommendation and renews his request that his Motions be granted and that the requested evidence be suppressed." (*Id.* at 1, ¶ 4.) This type of general objection offers little aid to the Court in focusing on any errors which may have been made by the Magistrate Judge.

¹Defendant also filed a Motion to Sever (ECF No. 304). The Magistrate Judge denied this motion as moot (ECF No. 350) after the parties represented in a joint motion that it was moot. (*See* ECF No. 347 at 2.) The Magistrate Judge did not address two of Defendant's pretrial motions: a Motion to Exclude Ballistics Evidence (ECF No. 303) and a Motion for a Pretrial Determination of the Admissibility of Coconspirator Statements (ECF No. 302). The Order and Recommendation characterized the motions as "in the nature of pretrial motions *in limine*" and therefore appropriate for deferral to the District Court for resolution. (ECF No. 360 at 1, n.2). The parties previously stated in a joint motion that these motions were "evidentiary in nature and ruling on [them] should be deferred to the district court closer to but in advance of trial." (ECF No. 347 at 2.) The two motions remain pending.

Legal Standard

When a party objects to the magistrate judge's report and recommendation, the Court must conduct a de novo review of the portions of the report, findings, or recommendations to which the party objected. See United States v. Lothridge, 324 F.3d 599, 600 (8th Cir.2003) (citing 28 U.S.C. § 636(b)(1)). In this case, Defendant objects generally to all aspects of the Order and Recommendation.

Discussion

Pursuant to 28 U.S.C. § 636, the Court has conducted a de novo review of the entire Order and Recommendation. The Court has thoroughly and independently reviewed the full record by reading the briefing on all motions and the transcript of the evidentiary hearing held by Judge Noce. The Court has carefully examined the exhibits admitted into evidence at the hearing, and viewed Government Exhibit 4, the videotaped recording of Defendant's interview with Sheriff's Office Detective Pat Hearn on July 16, 2019.² Further, the Court has independently researched the controlling law.

As stated above, Defendant's objections to the Order and Recommendation merely refer to the arguments he made before the Magistrate Judge. Having fully considered all of these matters on de novo review, the Court agrees with and will sustain and adopt Judge Noce's recommendations as set out in the Order and Recommendation.

²The evidentiary hearing exhibits are:


Gov't Ex. 1, Normandy Police Department Miranda Warning;
Gov't Exs. 2A-2F, six photos that made up the photographic lineup shown to victim M.H.;
Gov't Ex. 2, St. Louis Metropolitan Police Department Photographic Lineup Acknowledgement;
Gov't Ex. 3A, search warrant application and affidavit;
Gov't Ex. 3B, search warrant;
Gov't Ex. 4, CD with videotaped statement of Defendant's interview by Sheriff's Office Detective Hearn;
Gov't Ex. 5, demonstrative exhibit: summary of descriptions provided by victim M.H.

Accordingly, after de novo review,

IT IS HEREBY ORDERED that the Order and Recommendation of United States Magistrate Judge (ECF No. 360) dated April 6, 2023, is **sustained, adopted** and **incorporated** herein.

IT IS FURTHER ORDERED that Defendant's Motion to Suppress Cellular Location Data (ECF No. 305), Motion to Suppress Photo Lineup Identifications (ECF No. 306), and Motion to Suppress Statements (Doc. 307), are **DENIED**.

IT IS FURTHER ORDERED that all pending oral motions are **DENIED as moot**.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 9th day of May 2023.